



MONTANA  
TELECOMMUNICATIONS  
ASSOCIATION

HB 27. R. Driscoll. E-911 Wireless Cost Recovery  
House Federal Relations, Energy and Telecommunications Committee  
January 8, 2007

Statement and Proposed Amendment by the  
**Montana Telecommunications Association (MTA)**

Statement of Support

MTA endorses statewide deployment of wireless E-911 service. (It is important that consumers understand that calling "911" from a wireless phone today is not guaranteed to get to the right, or any, public safety answering point—PASP.)

MTA endorses the structure of the bill which recognizes the additional challenges associated with rural county 911 administration. Forty of Montana's 56 counties contain less than one percent of the state's population, yet 911 service is as important in rural Montana as in "urban" counties.

Proposed Amendment

MTA's amendment is intended to clarify that *wireless* carrier cost recovery is permitted on an equitable basis in relation to cost recovery permitted for *wireline* carriers. The amendment further ensures that E911 fees are not used to fund expenses that wireless carriers are required by Federal Rules to self-recover.

Wireline carriers currently are reimbursed for monthly recurring costs (i.e., telephone circuits) associated with providing PSAPs with access to the 911 system. The law (10-4-302 and 10-4-311) also provides for recovery of costs incurred for "modification of central office and trunking equipment necessary to provide service for an enhanced 9-1-1 system only." In practice, these costs have been absorbed by carriers as part of their normal network operations. Few, if any, wireline carriers recovered their 911 development costs from 911 fees.

The Federal Communications Commission (FCC) in 2000 issued an Order which notes that "CMRS carriers...are not subject to rate regulation and may adjust their prices to recover their [911] costs."

MTA believes that HB 27, as introduced, may allow wireless carriers to recover "allowable costs" which exceed those which wireline carriers are permitted to recover, and which may permit recovery of costs which the FCC has directed CMRS carriers to self-recover.

Thus, MTA's amendment would clarify the definition of "allowable costs" to achieve parity between wireless and wireline E911 cost recovery.

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## 2007 Montana Legislature

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HOUSE BILL NO. 27

INTRODUCED BY R. DRISCOLL

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM AND PROVIDING FOR ITS ADMINISTRATION; PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 FEE; ESTABLISHING ACCOUNTS FOR THE DEPOSIT OF FEES COLLECTED; PROVIDING FOR DISTRIBUTION OF THE FEES COLLECTED; DEFINING ELIGIBILITY CRITERIA FOR WIRELESS COST RECOVERY; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, 10-4-201, AND 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 10-4-101, MCA, is amended to read:

**"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Allowable costs" means the actual recurring monthly costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply providing public safety answering points with access to Phase II wireless enhanced 9-1-1 service in compliance with federal communications commission orders.

(b) the term does not include costs associated with carrier cost self recovery as permitted by federal communications commission orders.

(4)(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

(2)(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

# Montana Code Annotated 2005

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**10-4-311. Distribution of enhanced account by department.** (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fee imposed by 10-4-201(1)(b); and

(b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid:

(a) for each fiscal year through the fiscal year ending June 30, 2007:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2007, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations.

**History:** En. Sec. 14, Ch. 448, L. 1997; amd. Sec. 6, Ch. 389, L. 1999.

*Provided by Montana Legislative Services*



FCC MAIL ROOM

Before the  
Federal Communications Commission  
2000 NOV 28 P 3:53 Washington, D.C. 20554

In the Matter of )  
)  
Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency ) CC Docket No. 94-102  
Calling Systems )

## FIFTH MEMORANDUM OPINION AND ORDER

Adopted: November 9, 2000

Released: November 22, 2000

By the Commission:

## I. INTRODUCTION

1. In this Fifth Memorandum Opinion and Order, we deny two petitions for reconsideration of the *E911 Second Reconsideration Order*,<sup>1</sup> in which we, *inter alia*, modified our Enhanced 911 (E911) rules to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. We affirm that: (1) adequate notice and opportunity for comment was provided, (2) a complete record supports our conclusion that the rule resulted in a significant impediment to Phase I implementation that was inconsistent with our rules and the statute, and (3) we fully considered the impact of removing the carrier cost recovery requirement on all carriers, including rural carriers. We continue to believe that removing the carrier cost recovery prerequisite is necessary to overcome delays in the implementation of Phase I and, potentially, Phase II of our E911 service. This will accelerate implementation of this important service, which will enable callers of 911 using a wireless telephone to obtain emergency assistance more rapidly and efficiently through the transmission of certain enhanced information that assists in locating the caller.

## II. BACKGROUND

2. In the E911 proceeding, the Commission imposed E911 rules on certain Commercial Mobile Radio Service (CMRS) licensees, based largely upon a framework developed by representatives of the wireless industry and public safety organizations in a Consensus Agreement.<sup>2</sup> The purpose of the

<sup>1</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Second Memorandum Opinion and Order, 14 FCC Rcd 20850 (1999), amending Sections 20.18(d) and (j) of the Commission's Rules, 47 C.F.R. §§ 20.18(d), (j) (*E911 Second Reconsideration Order*); *appeal pending sub nom.* United States Cellular Corp. v. FCC, No. 00-1072 (D.C. Cir., filed Feb. 28, 2000).

<sup>2</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18687-89 (paras. 21-23, noting the Consensus Agreement filed by CTIA, APCO, NENA, and NASNA) (1996), adopting new Section 20.18 of the Commission's Rules, 47 C.F.R. §§ 20.18, *et seq.* (*E911 First Report and Order*); Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997); Second Report and Order, 14 FCC Rcd (continued....)

carriers.<sup>25</sup>

11. In the *E911 Second Reconsideration Order*, we reviewed the proposed solutions of CTIA, RCA, and the carriers, which requested that we modify the rule to impose specific and detailed obligations on the states to adopt the uniform mechanisms currently being pursued under our rule.<sup>26</sup> Although RCA renews arguments that such proposals would provide guidance to states that would increase the pace of state approval of such carrier cost recovery mechanisms, we affirm our conclusion that such detailed and varied requirements would only increase the delays caused by these same issues and involve us in resolving these ongoing disputes.<sup>27</sup> We decided that eliminating the precondition for a carrier cost recovery mechanism was the better course, not only because it addressed the proposed solutions of APCO and the subsequent filings of NENA, but also the initial comments of the States of Hawaii and Washington, the Public Safety Associations, and Wireless Consumers Alliance, Inc. (WCA) that sought to avoid any specific requirement that prevents a carrier from implementing service promptly.<sup>28</sup>

12. Next, the *E911 Second Reconsideration Order* fully considered how elimination of the carrier cost recovery precondition was consistent with the law and our rules. As we discussed, CMRS carriers covered by our E911 rules are not subject to rate regulation and may adjust their prices to recover their costs.<sup>29</sup> Contrary to RCA's contentions, we had not prescribed cost recovery mechanisms in previous Orders or rejected carrier self-recovery as an alternative method, but rather had left the rule sufficiently broad to encourage prompt and effective solutions for different situations consistent with our schedule and service requirements.<sup>30</sup>

13. We also reject RCA's claim that our decision ignored the recommendations of CTIA and the responsive filings of the carriers and the recommendations of the two other public safety organizations, NENA and NASNA, that are Consensus Agreement parties. We addressed these concerns in the *E911 Second Reconsideration Order* when we eliminated the carrier cost recovery rule, but retained the rule to continue to provide for mechanisms that recover the PSAP's E911 costs.<sup>31</sup> In providing for PSAP cost recovery, we agreed with a subsequent filing of NENA and NASNA that adequate funding of PSAPs is a critical element in ensuring timely E911 implementation and that States and localities should be encouraged to provide such funding.<sup>32</sup> As NENA states, RCA's reliance on

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<sup>25</sup> *Id.*, at 20863-70 (paras. 32-48).

<sup>26</sup> *Id.*, at 20870-72 (paras. 48-52).

<sup>27</sup> *Id.*, at 20871-72 (paras. 51-52).

<sup>28</sup> *Id.*, at 20867 (para. 39), 20870 (paras. 49-50).

<sup>29</sup> *Id.*, at 20872 (para. 52).

<sup>30</sup> *Id.*, at 20861 (para. 24), 20862 (para. 28), 20866 (para. 38).

<sup>31</sup> *Id.*, at 20877-80 (paras. 65-72).

<sup>32</sup> *Id.*, at 20877-79 (para. 67 n. 98, paras. 66-69).